IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-06-07-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice AR. RAMALINGAM

Writ Petition No. 1514 of 2001

and W.P.M.P.No. 3217 of 2005

R. Swaminathan.

.. Petitioner.

Vs.

1. The Union of India,
   represented by the Secretary to the
   Government, Union Territory of
   Pondicherry, Law Department,
   Pondicherry.

2. The Chief Judge,
   Pondicherry.

.. Respondents.

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records leading to the issue of the impugned order No. 3883/JD/A/2000 dated 01-11-2000 of the second respondent and quash the same and direct the respondents to reinstate the petitioner to service with all back wages, monetary, service and consequential benefits.

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For petitioner :- Mr. D. Bharatha Chakravarthy.

For 2nd Respondent:- Mr. T. Murugesan, Govt., Pleader,
(Pondicherry).

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ORDER

(Order of Court was made by P. Sathasivam, J.,)

"Good administration of justice does not only depend upon the judges, but also upon the lawyers and the entire staff of the Judiciary".

The petitioner R. Swaminathan. Ex-Amin in the District Court, Karaikal has filed this writ petition praying for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the Chief Judge, Pondicherry, 2nd respondent herein, in No. 3883/JD/A/2000 dated 01-11-2000 imposing punishment of dismissal from service on the petitioner which shall be a disqualification for future employment under the Government and for consequential benefits.

2. The brief facts are as follows:

The petitioner was appointed as Orderly-cum-Peon in Judicial Department, Government of Pondicherry with effect from 17-03-1980 and was promoted as Copyist/Attender with effect from 11-2-1993, by Office Order No. 281/JD/A/93-232, dated 27-1-1993 of the Judicial Department, Pondicherry. The Disciplinary proceedings was initiated against him consequent on a complaint dated 21-2-98 given by one Tmt. A. Maheswari, Wife of Thiru M. Anbalagan, residing at B/4, Government Servants Quarters, Thalathereu, Karaikal to the Additional District Judge, Karaikal stating that Thiru R. Swaminathan, Amin, formerly at Additional District Court, Karaikal, now at District Court, Pondicherry, a Government servant, while executing a warrant in E.P. 26/95 in O.S.No. 231/93, on the file of District Munsif Court, Karaikal, demanded a sum of Rs.200/- on a day in August, 1997 and received a sum of Rs.100/-as bribe from her husband Thiru M. Anbalagan, residing at B/4, Government Servants Quarters, Nehru Nagar, Karaikal for making false endorsement "door locked J.D. out of station" in the arrest warrant in the above case and that he has also demanded from her Rs.100/- for petrol expenses on 04-02-1998 in the guise of execution of arrest warrant against her husband in the above said case and has also demanded Rs.100/- and received Rs.50/- from the said Thiru M. Anbalagan for handing over the notice meant for the said A. Maheswari in A.S.277/97 on the file of District Court, Nagapattinam. Since his explanation was not acceptable, pursuant to the direction of the High Court and on consideration of the request of the Chief Judge, Pondicherry, the High Court by Official Memorandum dated 27-8-1999, has directed the Special Officer, Judicial Department, Pondicherry to conduct enquiry and as such the Special Officer was appointed as Enquiry Officer. The Special Officer, Judicial Department, Pondicherry by Memorandum dated 12-5-99 issued to the petitioner framed 4 articles

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of charges contained in Annexure-I to the Memorandum and enclosing Annexure-II indicating the list of witnesses and documents by which the articles of charges are proposed to be sustained against him. The petitioner was required to submit his written statement within 10 days from the date of receipt of the Memorandum by him. The petitioner denied all the charges as false and submitted that the judgement-debtor and his wife had sent the complaint against him to harass him out of ill-will. The Special Officer conducted enquiry against the petitioner, who participated in the enquiry. The Special Officer submitted his enquiry report dated 18-2-2000 holding that all the four charges were proved against the charged official. By Memorandum dated 18-2-2000 the Special Officer served the charged official with copy of the report dated 18-2-2000 requesting him to submit his written explanation or submission to the Special Officer within 15 days from the date of receipt of the Memorandum. The petitioner submitted his written representation on 20-3-2000. The Special Officer after finding that as contemplated under Rule 14(21)(a) and 15(4) of Central Civil Service (Classification, Control and Appeal) Rules, 1965, forwarded the entire records to the Chief Judge, Pondicherry who is the authority competent to impose the penalty concerned. By proceedings dated 18-7-2000, the Chief Judge, Pondicherry served a copy of the enquiry report dated 18-2-2000, copy of the findings dated 20-3-2000 of the Special Officer on the petitioner as per Rule 15 (1-A) and 14(21) of the said Rules and required him to submit within 15 days from the date of receipt of the proceeding by him, his written representation/submission, and indicated therein that if the charged official desired for a personal hearing the same be specified in his representation and also requested the Chief Judge to give a personal hearing to him. A personal hearing was given to him on 21-8-2000. Thereafter, the Chief Judge, Pondicherry by the impugned order dated 1-11-2000, dismissed him from service with immediate effect. Questioning the same, the petitioner has filed this writ petition before this Court.

3. Heard Mr. D. Bharatha Chakravarthy, learned counsel for petitioner and Mr. T. Murugesan, learned Government Pleader, Pondicherry for respondent.

4. Mr. D. Baratha Chakravarthy, after taking us through the charges levelled against the petitioner, the enquiry proceedings, and the impugned order of the second respondent, has raised the following contentions:

i) The finding of the enquiry officer holding that all the four charges were proved is not based on reasonable and acceptable evidence;

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ii) While serving charge memo, the petitioner was not furnished with statement of imputation drawn up by the department and failure to do so, caused prejudice to him in defending those charges;

iii) The Special Officer who conducted enquiry is not a competent authority; accordingly the entire enquiry proceedings is vitiated; and

iv) In any event, the punishment of dismissal is excessive and disproportionate to the charges.

On the other hand, learned Government Pleader, Pondicherry would submit that there is no flaw in the procedure adopted, that the petitioner was afforded with adequate opportunity to participate in the enquiry, that in fact, he participated in the enquiry and that on consideration of the entire materials, the enquiry Officer found that all the charges were proved. He further contended that after analysing the same and after affording further opportunity, the District Judge, Pondicherry who is the appointing authority, passed the impugned order, dismissing the petitioner from service. There is no valid ground for interference; accordingly prayed for dismissal of the writ petition.

5. We have considered the rival contentions and perused the relevant materials.

6. Coming to the first contention, namely, that no material/evidence before the enquiry officer, the complainant was one A. Maheswari, who was a judgement-debtor in E.P.26/95 in O.S.No. 231/93 on the file of Principal District Munsif, Karaikal and against whom a warrant of arrest had been issued by the Court. It is not in dispute that it is the duty of the Court Amin (petitioner herein) to execute the warrant in accordance with law as per the orders of the Court. It is also not the case of the petitioner that the judgment-debtor developed grouse against him in executing the warrant. In the complaint of A. Maheswari to the District Judge, Karaikal as also her statement before the Inspector of Police, Vigilance Cell, Judicial, she has narrated the existence of decree against herself and her husband Anbalagan who is a teacher. It is also seen from the complaint that pursuant to the warrant issued by the Court, the petitioner who was working as Amin at that time came to her house and threatened that unless she pays bribe of Rs.100/- or Rs.200/-, she cannot make any endorsement to the effect that the judgement-debtors are absent. It is also her claim that the petitioner demanded money on two occasions and also threatened that if bribe is not paid, he will take away all the house-hold articles by engaging an autorickshaw. Based on her complaint and her statement, an enquiry was conducted and before the enquiry officer, the complainant, namely, Maheswari herself was

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examined as S.W.1, her husband Anbalagan as S.W.2 and one M. Ganesan, Deputy Nazir of the Additional District Munsif's Court, Karaikal as S.W.3, besides marking certain documents on their side. The enquiry report shows that S.W.1 and S.W.2 reiterated their stand in the complaint and statement before the Vigilance Officer and also the demand and payment of bribe to the petitioner. S.W.3 Court staff has also spoken to about the endorsement made by the petitioner (Court amin). It is also not in dispute that the petitioner had the opportunity of cross-examining those witnesses and in fact cross-examined them at length. In addition to the same, the petitioner himself was examined as D.W.1 and also examined one R. Sekar, advocate's clerk of the decree-holder, in support of his defence. The enquiry officer analysed the oral and documentary evidence and the 4 articles of charges and ultimately in his report dated 18-2-2000 found that charges 1 to 4 have been proved against the delinquent. These matters were analysed by the District Judge/appointing authority and after satisfying himself with reference to the service rules and taking note of the gravity of the proved charges, imposed the punishment of dismissal from service. In such a circumstance, the contention of the counsel for petitioner that there is no material or acceptable evidence is liable to be rejected. On the other hand, we are satisfied that the outcome of the enquiry shows that the same was based on acceptable oral and documentary evidence and also satisfied that the petitioner was afforded adequate opportunity to put-forth his case before the enquiry officer; accordingly, we reject the first contention as devoid of any merit.

7. Coming to the second contention that petitioner was not served with statement of imputation along with charge memo, it is seen that pursuant to the direction of the Chief Judge, Pondicherry as well as on the basis of the Official Memorandum of this Court, the Special Officer, Judicial Department, Pondicherry framed four articles of charges. The perusal of the said Memorandum shows that it not only contains four charges, but also contains the list of witnesses and documents by which the articles of charges were proposed to be sustained against him. By furnishing those materials, the petitioner was required to submit his written statement within ten days from the date of receipt of the memorandum by him. On perusal of those documents, we find there is no substance in the contention raised by the learned counsel for the petitioner.

8. It is the claim of the petitioner that the Special Officer, who conducted enquiry, after issuance of show cause notice, arrived at a conclusion that there is no valid defence and he was not the competent authority to arrive such a conclusion. It is true that on completion of the enquiry, the Special Officer himself sent a show cause notice including copy of

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the enquiry report calling upon the petitioner to submit his further explanation, if any. The petitioner also submitted his explanation. At that stage the Special Officer/Enquiry Officer realised that the delinquent being a court staff, and the District Judge, Pondicherry alone is competent to impose major penalty, forwarded all the materials, including his report to him for appropriate action. It is not in dispute that thereafter on receipt of the enquiry report, the District Judge issued second show cause notice asking the petitioner to submit his further explanation, if any, by enclosing copy of the enquiry report. It is also not in dispute that pursuant to the same, the petitioner submitted his further explanation which was considered by the District Judge who alone is the Head of the Department and competent authority to impose major penalties. The perusal of the ultimate order of the District Judge does not show that he was influenced by the observation or decision of the Special Officer in arriving at a final conclusion based on the enquiry report and the explanation of the delinquent. We are satisfied that as per the CCS (CCA) Rules, the District Judge is the competent authority to award major punishment against the petitioner and accordingly, he rightly passed the impugned order by following the procedure prescribed therein; hence, we find no substance in the said contention also.

9. Coming to the last contention, namely, that the punishment of dismissal is harsh, excessive and disproportionate to the charges, here again, this aspect was considered specifically by the disciplinary authority, namely, the District Judge. After considering the enquiry report, holding that all the four charges were proved and considering the fact that the petitioner being a staff of the Judicial Department is expected to maintain integrity, and to protect the faith of the public on Judicial system,but he acted against the principles of the Judicial system and the expectation of the public, he imposed the penalty of dismissal from service. The authority while awarding the punishment took into consideration that the punishment is proportionate to the charges proved, which are grave in nature. We are not impressed upon the argument of the learned counsel for the petitioner and there is no valid ground for modification or reduction in the punishment awarded by the disciplinary authority. On the other hand, we hold that the punishment of dismissal is quite warranted and appropriate.

10. Though learned counsel for petitioner relied on certain decisions in support of his argument, in the light of our conclusion based on acceptable oral and documentary evidence, we are of the view that there is no need to refer the same.

11. As observed in the beginning of our order, the

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Judicial Department has to serve the people and as it command grater respect and should have a good image in the public. The administration of justice does not only depend upon Judges, but upon the lawyers and the entire staff of the judiciary. The staff executing the orders of the Court have onerous duty to be upright, if they are corrupt, they can even make the orders of a Court infructuous. They have to perform their duty without any likes or dislikes or attachment to money. If corruption is allowed either in the lower or higher level, it would be a virus to destroy the entire judicial system, and the faith of the public on the Judicial system will foil. In the light of our discussion, we do not find any merit in the claim made by the petitioner; accordingly the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

R.B.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Union of India,
   represented by the Secretary to the
   Government, Union Territory of
   Pondicherry, Law Department,
   Pondicherry.

2. The Chief Judge,
   Pondicherry.

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+1cc to Spl.Government Pleader (Pondy) SR.No.28169.

+1cc to Mr.DBharatha Chakravarthy,Advocate SR.No.28060.

TEJ (CO)
DCP/08.07

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